

Attachment B

Issue #67 – Requirement that Permittee make records created and managed according to Permit available to Department.

Federal Rule:

40 CFR 122.34 was modified in December, 2016. The changes took effect in January, 2017. MS4 record keeping and reporting requirements are now covered under 40 CFR 122.34(c)(2) and (3), which state:

(c) Other applicable requirements. As appropriate, the permit will include:

. . . .

(2) Recordkeeping. The permit must require that the permittee keep records required by the NPDES permit for at least 3 years and submit such records to the NPDES permitting authority when specifically asked to do so. The permit must require the permittee to make records, including a written description of the storm water management program, available to the public at reasonable times during regular business hours (see §122.7 for confidentiality provision). (The permittee may assess a reasonable charge for copying. The permit may allow the permittee to require a member of the public to provide advance notice.)

(3) Reporting. Unless the permittee is relying on another entity to satisfy its NPDES permit obligations under §122.35(a), the permittee must submit annual reports to the NPDES permitting authority for its first permit term. For subsequent permit terms, the permittee must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. As of December 21, 2020 all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the NPDES permitting authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), §122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit or if required to do so by state law. The report must include:

State Rule:

NR 216.07(1)(f) entitled, “Records retention,” states:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least 3 years from the date of the sample, measurement, report or application. All pertinent sludge information, including permit application information and other documents specified in the permit or ch. NR 204, shall be retained for a minimum of 5 years. The department may request that this period be extended by issuing a public notice to modify the permit to extend this period.

NR 216.07(1)(L) entitled “Duty to provide information,” states:

The permittee shall furnish the department, within a reasonable time, any information which the department may request to determine whether cause exists for modifying, terminating, suspending, revoking or reissuing the permit or to determine compliance with the permit. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may

result in noncompliance with permit requirements. The permittee shall also furnish the department, upon request, copies of records required to be kept by the permittee.

MS4 General Permit Conditions:

The relevant permit sections and conditions for this issue are outlined below.

4. STANDARD CONDITIONS

The conditions in s. NR 205.07(1) and (3), Wis. Adm. Code, are incorporated by reference in this permit. The permittee shall be responsible for meeting these requirements, except for s. NR 205.07(1)(n), Wis. Adm. Code, which does not apply to facilities covered under general permits. Some of these requirements are outlined below. Requirements not specifically outlined below can be found in s. NR 205.07(1) and (3), Wis. Adm. Code.

4.12. Inspection and Entry: The permittee shall allow authorized representatives of the Department, upon the presentation of credentials, to:

4.12.1 Enter upon the municipal premises where a regulated facility or activity is located or conducted, or where records are required to be maintained under the conditions of the permit;

4.12.2 Have access to and copy, at reasonable times, any records that are required under the conditions of the permit;

4.13 Duty to Provide Information: The permittee shall furnish the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, terminating, suspending revoking or reissuing the permit or to determine compliance with the permit. The permittee shall give advance notice to the Department of any planned changes to the storm water management program which may result in noncompliance with permit requirements. The permittee shall also furnish the Department, upon request, copies of records required to be kept by the permittee.

4.16 Records Retention: The permittee shall retain records of all monitoring information, copies of all reports required by the permit, and records of all data used to complete the notice of intent for a period of at least 5 years from the date of the sample, measurement, report or application. The permittee shall retain records documenting implementation of the minimum control measures in sections 2.1 through 2.6 of this permit for a period of at least 5 years from the date the record was generated.